

On December 22, 2010, the Nebraska Supreme Court adopted the following amendments to Neb. Ct. R. §§ 6-401 to 6-419, which amendments are effective May 1, 2011:

CHAPTER 6

TRIAL COURTS

ARTICLE 4

ELECTRONIC FILING AND SERVICE SYSTEM IN TRIAL COURTS

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§ 6-401. Definitions.

(A) Electronic Filing System. Electronic filing system (E-Filing System) approved by the Nebraska Supreme Court for filing of pleadings, motions, and other papers (Documents) via the Internet through the court-authorized service provider.

(B) Electronic Filing. Electronic filing (E-Filing) is the transmission of Documents to the Clerk of the Court, and from the court, via the E-Filing System.

(C) Electronic Service. Electronic service (E-Service) is the transmission of Documents to any party in a case via the E-Filing System. Any party or attorney who has registered to use the E-Filing System thereby agrees to receive service of any Document, other than service of a summons or initial pleading, via the E-Filing System.

(~~D~~) Durable Medium. Durable medium shall be any information storage medium that is created by a

durable process. A process shall be the combination of hardware, software, storage media, techniques, and procedures used to manage, create, store, retrieve, and delete information belonging to the party required to maintain the record. A process shall be durable if it meets the following criteria:

- (1) The process is capable of creating and storing information for the required records retention period.
- (2) The process can be migrated to a successor process when necessary and will retain all information available in the original process after migration to the successor process.
- (3) The process maintains the integrity of information in a readily accessible manner, makes it retrievable, makes it processable through an established usual or routine set of procedures using available hardware and software, and makes it accurately reproducible in a human-readable form.
- (4) The process provides for disaster recovery backups, which are periodically, depending on a retention schedule, verified for restorability and readability, and can be stored in a separate geographical location from the original information.
- (5) The process is demonstrated to create and maintain information for the retention period as specified, in an accurate, reliable, trustworthy, dependable, and incorruptible manner.
- (6) The process allows the removal of information when it reaches the end of its required retention period.
- (7) The process is documented so as to demonstrate to a reasonable person compliance with these criteria.

COMMENT

The definition of “durable medium” is modeled on 430 Neb. Admin. Code, ch. 1, § 001.18 (2009).

§ 6-401(A) amended and § 6-401(C) deleted August 12, 2008; § 6-401(C) adopted January 21, 2010.

§ 6-402. Pilot project; schedule of courts; suspension.

E-Filing is authorized on a pilot project basis for certain cases filed in specified district and county courts in Nebraska, as set forth in a schedule by the Administrative Office of the Court, as revised from time to time. At the discretion of the Chief Justice, in consultation with the presiding judge of the particular court, E-Filing may be suspended in certain courts that are experiencing technical difficulties.

§ 6-402 amended August 12, 2008.

§ 6-403. Attorney registration.

For purposes of the pilot project, only attorneys licensed to practice law in Nebraska may register to use the E-Filing System. Any attorney so registered may make an entry of appearance through E-Filing.

§ 6-404. Initial pleading and summons; copy costs.

Under the pilot project, cases may be commenced under Neb. Rev. Stat. § 25-501 through an E-Filing; however, service of the initial pleading and the summons shall not be made by E-Service. The electronic filing of a complaint or other initial pleading from which printed copies can be made shall be deemed compliant with the requirement of Neb. Rev. Stat. § 25-504.01 to supply copies of a complaint. The court clerk shall print sufficient copies for service with the summons. The party filing such complaint or pleading electronically shall be deemed to have consented to pay the reasonable expense of printing such copies. The summons and any required attachments to the summons shall be provided in printed form by the court clerk and shall be served in accordance with Neb. Rev. Stat. § 25-505.01 et seq., unless service is waived or otherwise excused by law. If an attorney who has entered an appearance in a case has not registered for E-Filing, then service of the e-filed pleading upon that attorney shall be made as required by law.

Rule 4 amended December 20, 2006. Renumbered and codified as § 6-404, effective July 18, 2008; § 6-404 amended August 12, 2008.

§ 6-405. Pleadings allowed by ~~e-f~~E-Filing.

For cases under the pilot project, Documents which are required by Neb. Ct. R. Pldg. § 6-1105 to be filed in the office of the court clerk may be filed through an E-Filing.

§ 6-406. Time of filing.

All Documents electronically received by the court clerk by 11:59:59 p.m. local time shall be deemed to have been filed on that date.

Rule 6 amended June 4, 2008. Renumbered and codified as § 6-406, effective July 18, 2008.

§ 6-407. Maintaining copies.

(A) Except as provided in subsection (B) of this section, a copy of an E-Filed Document with original signatures shall be maintained either in paper form or in electronic form. A copy maintained in electronic form shall be stored using a durable medium as defined in § 6-401. The copy shall be maintained by the filing party and made available for inspection by other parties or the court upon request, but shall not be filed with the court. Where these rules require a party to maintain a Document, the filer is required to maintain the Document for a period of 2 years after the final resolution of the action, including the final resolution of all appeals.

(B) Where an E-Filed Document is signed by only the attorney using the E-Filing System, the attorney shall not be required to maintain a copy of the E-Filed Document.

§ 6-407 deleted and § 6-408 renumbered to § 6-407 on August 12, 2008; § 6-407(A) amended January 21, 2010; § 6-407(B) adopted January 21, 2010.

§ 6-408. Documents filed under seal; motion and order.

A motion for leave to file Documents under seal may be E-Filed. Documents to be filed under seal pursuant to an order of the court shall not be E-Filed.

§ 6-409 renumbered to § 6-408 on August 12, 2008.

§ 6-409. Signature requirements.

Use of the E-Filing System by an attorney shall constitute compliance with the Neb. Ct. R. Pldg. § 6-1111 signature requirement and the attorney using the E-Filing System shall be subject to all other requirements of Neb. Ct. R. Pldg. § 6-1111 and Neb. Rev. Stat. § 25-824 et seq. Signatures of parties, witnesses, and notaries and notary stamps may be typed using the signature format “/s/ [typed name]” and using the stamp format “seal, notary public, State of [state name],” and commission expiration date and E-filed to satisfy signature and certification requirements, once the filing party has possession of the original signatures and stamps. If the notarial commission of the particular notary public whose seal is being depicted is limited by county, the filing party shall use the stamp format “seal, notary public, State of [state name], County of [county name].” Other seals or stamps, such as those of courts, public bodies, agencies, or officials, or corporations, may be typed using the stamp format “seal, [alphanumeric content of seal].” Signatures of parties, witnesses, and notaries, and notary stamps or other seals, shall not be typed or otherwise depicted on E-Filed Documents unless the filing party has possession of the original document or documents bearing such signatures and stamps.

§ 6-410 renumbered to § 6-409 on August 12, 2008.

§ 6-410. Court documents served on registered attorneys.

A court may transmit orders, notices, and other court entries via the E-Filing System to attorneys registered to use the E-Filing System.

§ 6-411 renumbered to § 6-410 on August 12, 2008.

§ 6-411. Form of ~~e-f~~E-Filed pleadings.

Neb. Ct. R. Pldg. § 6-1110 shall apply to E-Filed Documents. An E-Filed Document shall not be transmitted to the District Court Clerk/County Court Clerk Magistrate by any other means unless the court at any later time requests a printed copy bearing original signatures.

§ 6-412 renumbered to § 6-411 on August 12, 2008.

§ 6-412. Signatures indicated by typing.

A document that requires the signatures of opposing parties or counsel (such as a stipulation) may be electronically filed by typing the names of each signing party or counsel, but the filer is required to first obtain the original signatures of all opposing parties or counsel on a printed document.

§ 6-413 deleted and § 6-414 renumbered to § 6-413 on July 23, 2008; § 6-413 renumbered to § 6-412 on August 12, 2008.

§ 6-413. Return envelopes unnecessary.

Attorneys who E-File shall not submit paper, self-addressed, stamped envelopes for the purpose of receiving a signed order or file-stamped copies of pleadings back from the court in active cases. Local courts shall use E-Filing to distribute such court orders or file-stamped copies of pleadings.

§ 6-415 renumbered to § 6-414 on July 23, 2008; § 6-414 renumbered to § 6-413 on August 12, 2008.

§ 6-414. Transmission technical problems; corrective order.

Upon satisfactory proof that E-Filing or E-Service of a Document is not completed because of (1) an error in the transmission of the Document to the E-File System service provider which was unknown to the sending party or (2) a failure to process the electronic filing when received by the court clerk, the court may enter an order permitting the Document to be filed as of the date it was first attempted to be sent electronically. Notwithstanding the foregoing, no order may be entered under this rule which expands the statutory time period for commencing an action or perfecting an appeal unless there is an affirmative showing that the failure to make a timely filing was due solely to an E-Filing System internal transmission error or a processing error by the court clerk.

§ 6-416 renumbered to § 6-415 on July 23, 2008; § 6-415 renumbered to § 6-414 and amended on August 12, 2008.

§ 6-415. Good faith compliance; waiver of certain defects.

Upon a showing of substantial good faith compliance with the E-Filing System interim rule, the court may waive nonjurisdictional defects in an E-Filing or E-Service if it finds that no harm has occurred to any party as a result of the defective E-Filing or E-Service.

§ 6-417 renumbered to § 6-416 on July 23, 2008; § 6-416 renumbered to § 6-415 and amended on August 12, 2008.

§ 6-416. Appeal of ~~e-f~~E-Filed cases.

If an E-Filing court case is appealed, the clerk of the E-Filing court shall prepare a paper file from the electronic files of the case to submit to the appellate court.

§ 6-418 renumbered to § 6-417 on July 23, 2008; § 6-417 renumbered to § 6-416 on August 12, 2008.

§ 6-417. Change of attorney; unregistered attorney; reversion to paper file.

In the event of a change of attorneys in an E-Filed case from a registered E-filing attorney to an attorney who is not a registered E-Filing attorney, the case will revert to paper. In that circumstance, the clerk will prepare a paper file from the electronic file.

§ 6-419 renumbered to § 6-418 on July 23, 2008; § 6-418 renumbered to § 6-417 on August 12, 2008.

§ 6-418. Conversion of ~~e-f~~E-Files to paper files.

If the clerk of the court ceases to maintain an electronic file, the clerk will prepare a complete and certified copy of the electronic file in paper form.

§ 6-420 renumbered to § 6-419 on July 23, 2008; § 6-419 renumbered to § 6-418 on August 12, 2008.

§ 6-419. E-Service.

(A) For cases under the pilot project, E-Service may be used for any document to be electronically filed, except for the initial pleading and summons. Documents which are required to be served pursuant to Neb. Ct. R. Pldg. § 6-1105 and in the manner required by § 6-1105(b)(2) may be served through E-Service or through a combination of E-Service and any other method permitted by § 6-1105. A Document electronically received by the E-Filing provider for service by 11:59:59 p.m. local time shall be deemed to have been served on that date.

(B) For purposes of Neb. Ct. R. Pldg. § 6-1105(b), service by E-Service to any party or attorney who has registered to use the E-Filing System shall constitute service pursuant to § 6-1105(b)(2)(F). For purposes of computing a prescribed period pursuant to Neb. Ct. R. Pldg. § 6-1106(e), service by E-Service shall constitute service pursuant to § 6-1105(b)(2)(F).

Rule 21 amended December 20, 2006. Renumbered and codified as § 6-421, effective July 18, 2008; § 6-421 renumbered to § 6-420 on July 23, 2008. § 6-420 deleted August 12, 2008.

COMMENT

The court-authorized service provider for the pilot project is Nebraska.gov and the State of Nebraska Office of the Chief Information Officer. (Effective April 1, 2008.)

At present, the system is not set up to allow E-Filing by pro se litigants or attorneys not licensed to practice law in Nebraska. The Supreme Court contemplates that E-Filing participants may be expanded in the future.

Comment amended August 12, 2008.

Originally Adopted September 27, 2006.